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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

Nellie Christensen, Stephanie Wright, Jennifer Christensen, Zachary Christensen, *et al. and unknown Plaintiffs 1-110,000,000,* Plaintiffs, v. Target Corporation, a Minnesota Corporation, Visa Corporation, a New York Corporation, MasterCard Incorporated, a California Corporation, and JOHN or JANE DOES 1- 10 Defendants.	AMENDED CLASS ACTION COMPLAINT FOR: 1. Violation of Utah Unfair Competition Act, Utah Code Annotated 13-5a-101 et seq.; 2. Invasion of Privacy - Intrusion, Public Disclosure of Private Facts, Misappropriation of Likeness and Identity, and Utah Constitutional Right to Privacy; 3. Negligence; 4. Breach of Contract and Bailment; 5. Conversion; Case No: 2-13-cv-01136-CW-DPB Judge: Clark Waddoups Demand for Jury Trial

COME NOW Plaintiffs Nellie Christensen, Stephanie Wright, Jennifer Christensen, Zachary Christensen, *et al*. and unknown Plaintiffs 1-110,000,000 ("Plaintiffs") and bring this class action against Defendants TARGET CORPORATION ("TARGET"), a Minnesota Corporation, Visa Incorporated ("VISA"), a California Corporation, MasterCard Incorporated ("MASTERCARD"), a New York Corporation, and DOES 1-10 (collectively, "Defendants") on behalf of themselves and all others similarly situated to obtain damages, restitution and injunctive relief for the Class, as defined, below, from DEFENDANTS. Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record, and avers and alleges as follows:

1. Plaintiff Nellie Christensen is a resident of South Jordan, Utah.
2. Plaintiff Stephanie Wright is a resident of West Jordan, Utah.
3. Plaintiff Jennifer Christensen is a resident of South Jordan, Utah.
4. Plaintiff Zachary Christensen is a resident of South Jordan, Utah.
5. Plaintiff Holly Alires is a resident of Midvale, Utah.
6. Plaintiff Kiya Amajioyi is a resident of Salisbury, Maryland.
7. Plaintiff VeAnn Bailey is a resident of St. George, Utah.
8. Plaintiff Cathy Barnes is a resident of Midvale, Utah.
9. Plaintiff Roger Barnes is a resident of Midvale, Utah.
10. Plaintiff Hernan Berrocal is a resident of Salt Lake City, Utah.
11. Plaintiff Martha Black is a resident of Herriman, Utah.
12. Plaintiff Yvonne Bronson is a resident of Plymouth, Utah.
13. Plaintiff Denise Brown is a resident of Buffalo, New York.
14. Plaintiff Timothy Burnett is a resident of Layton, Utah.
15. Plaintiff Marian Burningham is a resident of Eagle Mountain, Utah.
16. Plaintiff Chadwick Call is a resident of Woods Cross, Utah.
17. Plaintiff Janet Call is a resident of St. George, Utah.
18. Plaintiff Patrick Campbell is a resident of Eagle Mountain, Utah.
19. Plaintiff LaRee Cevering is a resident of Harrisville, Utah.

20. Plaintiff Marella Christensen is a resident of Ogden, Utah.

21. Plaintiff Renee Christensen is a resident of Stansbury Park, Utah.

22. Plaintiff Glenn Christison is a resident of West Valley City, Utah.

23. Plaintiff Stephanie Coleman is a resident of West Jordan, Utah.

24. Plaintiff Joan Diggs is a resident of Ogden, Utah.

25. Plaintiff Amanda Doucet is a resident of Riverdale, Utah.

26. Plaintiff Samantha Draayer is a resident of Roy, Utah.

27. Plaintiff Larissa Edgin is a resident of Magna, Utah.

28. Plaintiff Tasia Edwards is a resident of Ogden, Utah.

29. Plaintiff Wesley Ervin is a resident of Salt Lake City, Utah.

30. Plaintiff Nereida Fernandez is a resident of Newington, Connecticut.

31. Plaintiff Annie Fitzmaurice is a resident of St. George, Utah.

32. Plaintiff Anthony Freeman is a resident of Sandy, Utah.

33. Plaintiff Harry Gooch is a resident of Eagle Mountain, Utah.

34. Plaintiff Marty Greenlief is a resident of Sandy, Utah.

35. Plaintiff Ted Groves is a resident of Clearfield, Utah.

36. Plaintiff Rosanne Hall is a resident of Draper, Utah.

37. Plaintiff Tim Hall is a resident of Draper, Utah.

38. Plaintiff Jeffrey Harding is a resident of Lehi, Utah.

39. Plaintiff Greg Harrison is a resident of Rochester, New York.

40. Plaintiff Holli Hart is a resident of Salt Lake City, Utah.

41. Plaintiff Anna Heller is a resident of Salt Lake City, Utah.

42. Plaintiff Jamie Hixson is a resident of West Jordan, Utah.

43. Plaintiff Marilyn Hixson is a resident of West Jordan, Utah.

44. Plaintiff Chris Holverson is a resident of Provo, Utah.

45. Plaintiff Kimberly Holverson is a resident of Provo, Utah.

46. Plaintiff Stacy Hudson is a resident of Salt Lake City, Utah.

47. Plaintiff Binh Huynh is a resident of West Valley City, Utah.

48. Plaintiff Devin Jaeger is a resident of South Jordan, Utah.

49. Plaintiff DeeAnn Jones is a resident of South Jordan, Utah.

50. Plaintiff Cindy Kummer is a resident of Riverton, Utah.

51. Plaintiff Diane Lindley is a resident of Providence, Utah.

52. Plaintiff Shelley Lolis is a resident of Phelps, New York.

53. Plaintiff Brody Macfarlane is a resident of Roy, Utah.

54. Plaintiff Alan Magnin is a resident of Ogden, Utah.

55. Plaintiff John McCarthy is a resident of Salt Lake City, Utah.

56. Plaintiff Tim Morris is a resident of Sandy, Utah.

57. Plaintiff Lisa Nordstrom is a resident of South Jordan, Utah.

58. Plaintiff Randall Pipkins is a resident of Parowan, Utah.

59. Plaintiff Ruth Pipkins is a resident of Parowan, Utah.

60. Plaintiff Tyler Privett is a resident of South Jordan, Utah.

61. Plaintiff David Prusak is a resident of South Jordan, Utah.

62. Plaintiff Vicky Rackley is a resident of Taylorsville, Utah.

63. Plaintiff David Rasmussen is a resident of Sandy, Utah.

64. Plaintiff Richard Reece is a resident of Salt Lake City, Utah.

65. Plaintiff Michele Reid is a resident of Logan, Ohio.

66. Plaintiff Brent Robinson is a resident of Holladay, Utah.

67. Plaintiff Pamela Roundy is a resident of Salt Lake City, Utah.

68. Plaintiff Geaniel Rowley is a resident of Orem, Utah.

69. Plaintiff Anita Rutledge is a resident of American Fork, Utah.

70. Plaintiff William Rutledge is a resident of American Fork, Utah.

71. Plaintiff Jodi Schmidt is a resident of Olathe, Kansas.

72. Plaintiff Andrea Seiler is a resident of Riverdale, Utah.

73. Plaintiff JoAnn Seybold is a resident of West Valley City, Utah.

74. Plaintiff Cyndee Shapiro is a resident of Bluffdale, Utah.

75. Plaintiff Josh Shaw is a resident of Roy, Utah.

76. Plaintiff Ada LuAnn Sittre’ is a resident of LaVerkin, Utah.

77. Plaintiff Gary Sittre’ is a resident of LaVerkin, Utah.

78. Plaintiff Charles Small is a resident of Roy, Utah.

79. Plaintiff Kimberly Smith is a resident of Taylorsville, Utah.

80. Plaintiff Raymond Smith is a resident of Kaysville, Utah.

81. Plaintiff Loni Verhaal is a resident of Huntsville, Utah.

82. Plaintiff Loraleen Walker is a resident of Harrisville, Utah.

83. Plaintiff Julie Webb is a resident of Cedar City, Utah.

84. Plaintiff Andrew Webber is a resident of West Valley City, Utah.

85. Plaintiff Christine Wendt is a resident of Round Lake Beach, Illinois.

86. Plaintiff Laurie Whitten is a resident of Roy, Utah.

87. Plaintiff Dianne Whyte is a resident of Cottonwood Heights, Utah.

88. Plaintiff JoAnn Wilcox is a resident of St. George, Utah.

89. Plaintiff Kyler Williams is a resident of Salt Lake City, Utah.

90. Plaintiff Whitney Yardley is a resident of Washington, Utah.

91. Plaintiff Karissa Young is a resident of Meridian, Idaho.

92. Plaintiff Brian Zelch is a resident of Salt Lake City, Utah.

93. Defendant TARGET CORPORATION is a Minnesota Corporation headquartered in Minneapolis, Minnesota, and conducts business in the State of Utah.

94. Defendant Visa Incorporated is a California Corporation headquartered in Foster City, California, and transacts business in the State of Utah.

95. Defendant Master Card Incorporated is a New York Corporation headquartered in Purchase, New York, and transacts business in the State of Utah.

JURISDICTION AND VENUE

96. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). In the aggregate, Plaintiffs claims and the claims of the other members of the Class exceed $5,000,000.00 exclusive of interest and costs, and there are numerous class members who are citizens of states other than TARGET'S state of citizenship, which is Minnesota.

97. This Court has personal jurisdiction over TARGET because TARGET is authorized to do business in the State of Utah, and operates stores within this Judicial District.

98. This Court has personal jurisdiction over VISA because VISA voluntarily conducts business in the State of Utah, and through the Commerce Clause has engaged in economic transactions within the State of Utah.

99. This Court has personal jurisdiction over MASTERCARD because MASTERCARD voluntarily conducts business in the State of Utah, and through the Commerce Clause has

engaged in economic transactions within the State of Utah.

100. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because many of the acts and transactions giving rise to this action occurred in this District and because DEFENDANTS are subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

101. Upon information and belief, TARGET is the second-largest discount retailer in the United States and, as of 2013, was ranked 36th on the Fortune 500 list of top US companies, by revenue.

102. Upon information and belief, VISA is the largest supplier of credit cards within the United States and throughout the world.

103. Upon information and belief, MASTERCARD is the second largest supplier of credit cards within the United States and throughout the world.

104. Upon information and belief, VISA reported a fourth quarter net income of $1.41 billion dollars for the 2013 tax year.

105. Upon information and belief, VISA, MASTERCARD and Europay International formed EMV in 1993, which prompted the implementation of using chip and pin technology to deter fraud.

106. Upon information and belief, VISA and MASTERCARD have detailed knowledge concerning the costs and benefits of implementing chip and pin technology.

107. Upon information and belief, VISA and MASTERCARD refused to implement chip and pin technology in the United States in favor of less costly and less secure magnetic stripe cards.

108. Upon information and belief, following implementation of chip and pin technology in Europe, there was a decrease of up to 70% in credit card fraud reported in those countries where EMV is fully integrated.

109. Upon information and belief, TARGET received several internal and external memos, in the spring and summer of 2013, from the federal government and private research firms warning companies about the emergence of new types of malicious computer code targeting payment terminals.

110. Upon information and belief, TARGET was advised by a computer security staff analyst to review the security of its payment card systems two months prior to the data breach.

111. Upon information and belief, TARGET refused the computer security staff analyst's

request to review the security of the payment card system.

112. Upon information and belief, TARGET's failure to review its security of the payment card system directly lead to the illegal access of 40 million United States citizens debit or credit card numbers, and permitted an additional 70 million U.S. citizens private information to be stolen.

113. Plaintiffs shopped at Target, providing TARGET with confidential personal information, which later was stolen during the data breach.

114. Upon information and belief, the data breach affected approximately 40 million credit and debit cards which were processed in U.S. TARGET stores between November 27 and December 15, 2013.

115. Upon information and belief, during this three week data breach, an additional 70 million customer's stored information was stolen from TARGET's database.

116. Upon information and belief the first news of the data breach was published by a blogger (Brian Krebs of <http://krebsonsecurity.com/>) on or about December 18, 2013, before TARGET made any attempt whatsoever to notify affected customers.

117. As widely reported by multiple news services on December 19, 2013: "Investigators believe the data was obtained via software installed on machines that customers use to swipe magnetic strips on their cards when paying for merchandise at Target stores."

<http://www.cbsnews.com/news/target-confirms-massive-credit-debit-card-data-breach/> (posted December 19, 2013).

118. "The type of data stolen — also known as 'track data' — allows crooks to create counterfeit cards by encoding the information onto any card with a magnetic stripe."

<http://krebsonsecurity.com/> (posted December 19, 2013).

119. The thieves additionally stole and acquired access to PIN numbers, email addresses, physical addresses, telephone numbers, and additional information stored by Target on its data base for affected customers' debit cards, allowing the thieves to withdraw money from those customers' bank accounts. (Id.)

120. Thieves could not have accessed this information and installed the software on TARGET'S point-of-sale machines but for TARGET'S negligence.

121. Upon information and belief, VISA and MASTERCARD's failure to implement chip and

pin technology in the United States attracted international cyber hackers to attack the less secure cards and card systems.

122. Upon information and belief TARGET failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the data breach.

123. Plaintiffs allege that as this news broke, TARGET finally released a statement concerning the data breach, which statement did not notify affected customers directly, but the notification was posted as a statement on its corporate website (not on the shopping site regularly accessed by customers) on December 19, 2013, confirming "that the information involved in this incident included customer name, credit or debit card number, and the card's expiration date and CVV (the three-digit security code)." <https://corporate.target.com/discover/article/Important-Notice-Unauthorized-access-to- payment-ca> (posted December 19, 2013).

124. In its December 19 statement concerning the data breach, Target also claimed to "have identified and resolved the issue," conveying a false sense of security to affected customers. (Id.)

125. Upon information and belief, Plaintiffs identifying and financial information was disclosed in the data breach.

126. Plaintiffs contend that the ramifications of all named Defendants' failure to keep class members' data secure are severe.

127. The information Defendants lost, including Plaintiffs' identifying information and other financial information, is "as good as gold" to identity thieves, in the words of the Federal Trade Commission ("FTC"). FTC, *About Identity Theft*, available at <http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html> (March 23, 2011).

128. Plaintiffs contend, according to the FTC, that identity theft occurs when someone uses another's personal identifying information, such as that person's name, address, credit card number, credit card expiration dates, and other information, without the owner’s permission or consent, in order to commit fraud or other crimes. *Id*.

129. Identity thieves can use identifying data to open new financial accounts and incur charges in another person's name, take out loans in another person's name, incur charges on existing accounts, or clone ATM, debit, or credit cards. *Id*.

130. Identity thieves can use personal information such as that lost by DEFENDANTS and pertaining to the Plaintiffs and other Class members, which Defendants failed to keep secure by lack of security or failure to implement a more secure system in the United States, to perpetrate a variety of crimes that do not cause financial loss, but nonetheless harm the victims. For instance, identity thieves may commit various types of fraud, including, but not limited to: immigration fraud; obtaining a driver's license or identification card in the victim's name but with another's picture; using the victim's information to obtain government benefits; or filing a fraudulent tax return using the victim's information to obtain a fraudulent refund.

131. Additionally, identity thieves may obtain medical services using the Plaintiffs' lost information or commit any number of other fraudulent activities.

132. Annual monetary losses from identity theft are in the billions of dollars, and all Defendants are aware of these staggering statistics.

133. According to a Presidential Report on identity theft, produced in 2008:

> In addition to the losses that result when identity thieves fraudulently open accounts or misuse existing accounts,.. . individual victims often suffer indirect financial costs, including the costs incurred in both civil litigation initiated by creditors and in overcoming the many obstacles they face in obtaining or retaining credit. Victims of non-financial identity theft, for example, health-related or criminal record fraud, face other types of harm and frustration.
>
> In addition to out-of-pocket expenses that can reach thousands of dollars for the victims of new account identity theft, and the emotional toll identity theft can take, some victims have to spend what can be a considerable amount of time to repair the damage caused by the identity thieves. Victims of new account identity theft, for example, must correct fraudulent information in their credit reports and monitor their reports for future inaccuracies, close existing bank accounts and open new ones, and dispute charges with individual creditors.

The *President's Identity Theft Task Force Report* at p.21 (Oct. 21, 2008), available at

<http://www.idtheft.gov/reports/StrategicPlan.pdf>.

134. According to the U.S. Government Accountability Office ("GAO"), which conducted a study regarding data breaches:

> [L]aw enforcement officials told us that in some cases, stolen data may be held for up to a year or more before being used to commit identity theft. Further, once stolen data have been sold or posted on the Web, fraudulent use of that information may continue for years. As a result, studies that attempt to measure the harm resulting from data breaches cannot necessarily rule out all future harm.

GAO, *Report to Congressional Requesters*, at p.33 (June 2007), available at <http://www.gao.gov/new.items/d07737.pdf>.

135. Plaintiff and the Class they seek to represent now face years of constant surveillance of their financial and personal records, monitoring, and loss of rights.

CLASS ACTION ALLEGATIONS

136. Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

A. All persons who used credit or debit cards at Target Corporation stores and whose personal and/or financial information was breached during the period from on or about November 27 to on or about December 15, 2013. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

B. All persons who purchased items from Target not during the affected time period, but whose identifying information was stored on Target Corporation's database, which later revealed to be hacked into as well. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

C. All persons who have been financially harmed or damaged because of VISA and MASTERCARD's failure to implement chip and pin technology, or other more secure technology, in the United States, despite having direct knowledge concerning the benefits of this technology. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants

137. The members of the Class are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiffs at this time, based on information and belief, it is in the hundreds of millions.

138. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, Plaintiffs claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

139. This action satisfies the requirements of Federal Rules of Civil Procedure, Rule 23(b)(3) because it involves questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including, but not limited to:

a. Whether Defendants unlawfully used, maintained, lost or disclosed Class members' personal and/or financial information;
b. Whether TARGET unreasonably delayed in notifying affected customers of the data breach;
c. Whether Defendants failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the data breach.
d. Whether Defendants violated the requirements of Utah Code Annotated, Section 13-5a 103 et seq.
e. Whether Defendants' conduct violated the Utah Code Annotated, Section 13-44-102, et

seq.

f. Whether Defendants' conduct was negligent;

g. Whether Defendants acted willfully and/or with oppression, fraud, malice, or indifference to the consequences to Plaintiffs;

h. Whether Defendants' conduct constituted intrusion;

i. Whether Defendants' conduct constituted public disclosure of private facts;

j. Whether Defendants' conduct constituted misappropriation of likeness and identity;

k. Whether Defendants' conduct violated Class members' Utah Constitutional Right to Privacy;

l. Whether Defendants' conduct constituted bailment and breach of contract;

m. Whether Defendants' conduct constituted conversion;

n. Whether Plaintiffs and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

140. Plaintiffs claims are typical of those of other Class members because Plaintiffs information, like that of every other class member, was misused and/or disclosed by TARGET and failed to be secured by VISA and MASTERCARD.

141. Plaintiffs claims are typical of those other Class members who have likewise been subjected to financial harm or damages, loss of time, bank charges, late fees and/or other miscellaneous costs and damages.

142. Plaintiffs will fairly and accurately represent the interests of the Class.

143. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

144. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment, Defendants' violations of law inflicting

substantial damages in the aggregate would go un-remedied without certification of the Class.

145. Defendants have acted or refused to act on grounds that apply generally to the class, as alleged above, and certification is proper under Rule 23(b)(2).

FIRST COUNT

Violation of the Utah Unfair Competition Law UCA §13-5a-103, et seq.

146. Plaintiffs incorporate by reference paragraphs 1-145 as if fully set forth herein.

147. Defendants' conduct constitutes unfair and illegal and fraudulent business practices within the meaning of the Utah Unfair Competition Law.

148. Defendants' conduct violated certain laws as alleged herein, and, ergo, by engaging in the said conduct in the course of doing business, Defendants engaged in unlawful business practices in violation of the Utah Unfair Competition Law, Utah Code Annotated (UCA) § 13-5a-101 et seq.

149. Plaintiffs contend that by engaging in the above-described conduct in the course of doing business, Defendants engaged in unfair business practices in violation of the Utah Unfair Competition Law (U.C.A. § 13-5a-101 et seq). The harm and potential harm to each Plaintiff outweighed any utility that Defendants' conduct may have produced.

150. Plaintiffs contend that DefendantTargets' failure to disclose information concerning the data breach directly and promptly to affected customers, constitutes a fraudulent act or practice in violation of Utah Unfair Competition Laws.

151. Plaintiffs suffered injury in fact and lost property and money as a result of Defendants' joint conduct, or lack to institute appropriate protections and safeguards.

152. Plaintiffs seek restitution and injunctive relief on behalf of the Class.

SECOND COUNT

Invasion of Privacy - Intrusion, Public Disclosure of Private Facts, Misappropriation of Likeness and Identity, and Utah Constitutional Right to Privacy

153. Plaintiffs incorporate by reference paragraphs 1-152 as if set forth in full particularity herein.

154. Plaintiffs had a reasonable expectation of privacy in the private information Defendants mishandled and/or failed to protect as they have done in other countries.

155. By failing to keep Plaintiffs private information safe, and by misusing and/or disclosing said information to unauthorized parties for unauthorized use, Defendants invaded Plaintiffs privacy by:

a. intruding into Plaintiffs private affairs in a manner that would be highly offensive to a reasonable person;

b. publicizing private facts about Plaintiffs, which is highly offensive to a reasonable person;

c. using and appropriating Plaintiffs identity without Plaintiffs' consent;

d. violating Plaintiffs right to privacy under Utah Constitution, Article 1, Section 1, through the improper use of Plaintiff s private information properly obtained for a specific purpose for another purpose, or the disclosure of it to some third party.

156. Plaintiffs allege that Defendants knew, or acted with reckless disregard of the fact that, a reasonable person in Plaintiffs position would consider Defendants' actions highly offensive.

157. Plaintiffs assert that Defendants invaded Plaintiffs right to privacy and intruded into Plaintiffs private affairs by misusing and/or disclosing Plaintiffs private information without their informed, voluntary, affirmative and clear consent.

158. Plaintiffs allege that Defendants Visa and Mastercard had knowledge of superior security but chose not to implement said superior security for financial gain, and thereby exposed Plaintiffs to added, unnecessary risk.

159. Plaintiffs contend that as a direct and proximate result of such misuse and disclosures, Plaintiffs reasonable expectations of privacy in their private information was unduly frustrated and thwarted, and that the Defendants' conduct amounted to a serious invasion of Plaintiffs’ protected privacy interests.

160. Plaintiffs assert Defendants had a duty to protect Plaintiffs private information and that in failing to protect Plaintiffs private information, and in misusing and/or disclosing Plaintiffs private information, Defendants have acted with malice, oppression and in conscious disregard of Plaintiffs and the Class members' rights to have such information kept confidential and private. Plaintiffs, accordingly, seek an award of punitive damages on their behalf as well as on behalf of the Class.

THIRD COUNT

Negligence

161. Plaintiffs incorporate by reference paragraphs 1-160 as if set forth in full particularity herein.

162. Plaintiffs assert that Defendants came into possession of Plaintiff s private information and had a duty to exercise reasonable care in safeguarding and protecting such information from being compromised, lost, stolen, misused, and/or disclosed to unauthorized parties.

163. Plaintiffs contend that Defendant TARGET had a duty to timely disclose that Plaintiffs private information within its possession had been compromised.

164. Plaintiffs allege that Defendant TARGET had a duty to have procedures in place to detect and prevent the loss or unauthorized dissemination of Plaintiff s private information.

165. Plaintiffs assert that Defendant TARGET knew or should have known about the emergence of new types of malicious computer code targeting computer code targeting payment information.

166. Plaintiffs assert that in the spring and summer of 2013, Defendant TARGET received security memoranda from the federal government, along with private research firms, as well as internal notifications, indicating the threat of advances in malware were present in the community and that Defendant TARGET's security system might be vulnerable.

167. Plaintiffs assert that Defendant TARGET was advised by a member of its computer security staff to review the security of their payment card systems at least two months prior to the data breach.

168. Plaintiffs assert that Defendant TARGET refused the request made by its computer security analyst, despite having knowledge of the emergence of new malware, in favor of preparing for the upcoming holiday shopping period, and maximizing profits.

169. Plaintiffs assert that Defendants VISA and MASTERCARD, had a duty to protect Plaintiffs' information and were aware of the significantly lesser fraud in countries using chip and pin technology.

170. Plaintiffs assert that Defendants VISA and MASTERCARD helped develop the EMV chip and pin technology in Europe in 1993-1994.

171. Plaintiffs assert that Defendants VISA and MASTERCARD knew as early as 1994 that chip and pin technology was more secure, and would lead to a dramatic decrease in credit card fraud.

172. Plaintiffs assert that Defendants VISA and MASTERCARD refused to implement chip and pin technology in the United States because magnetic stripe cards are less costly to create, and said decision was strictly one of corporate profits.

173. Plaintiffs assert that Defendants VISA and MASTERCARD knew or should have known that by refusing to adopt the more secure technology created twenty (20) years ago, Plaintiffs would be targeted for credit and debit card fraud from criminals.

174. Plaintiffs assert that Defendants, through their actions and/or omissions, unlawfully breached their duty to Plaintiffs by failing to exercise reasonable care in protecting and safeguarding Plaintiffs private information within Defendants' possession.

175. Plaintiffs contend that Defendants, through their actions and/or omissions, unlawfully breached their duty to Plaintiffs by failing to exercise reasonable care, and by failing to have appropriate procedures and practices in place to detect and prevent dissemination and decryption of Plaintiffs private information.

176. Plaintiffs allege that Defendants, through their actions and/or omissions, unlawfully breached their duty to timely disclose to the Plaintiffs and the Class members the fact that their private information within their possession had been compromised.

177. Plaintiffs assert that Defendants' negligent and wrongful breach of their duties owed to Plaintiffs and the Class proximately caused Plaintiffs and the Class members' private information to be compromised.

178. As a direct and proximate result of Defendants negligence, Plaintiffs seek the award of actual damages on behalf of the Class.

FOURTH COUNT

Breach of contract and Bailment

179. Plaintiffs incorporate by reference paragraphs 1-178 as if set forth with full particularity

herein.

180. Plaintiffs and the Class members delivered and entrusted their Private information to Defendants for the sole purpose of receiving goods and services from Defendants, and/or having the ability to charge their purchases in safety.

181. Plaintiffs allege that TARGET made representations and entered into contractual and implied contractual relations regarding TARGET's duty to safeguard Plaintiffs private information, including, but not limited to TARGET's representation that:

> How is Your Personal Information Protected? Security Methods
> We maintain administrative, technical and physical safeguards to protect your personal information. When we collect or transmit sensitive information such as a credit or debit card number, we use industry standard methods to protect that information.
> Target Privacy Policy.

182. Plaintiffs contend that the contractual duties between Plaintiffs and Defendants were established via representations and a pattern of conduct between TARGET and its customers, as well as established by Mastercard and Visa in their contracts with their clients.

183. Plaintiffs assert that TARGET breached its duty to safeguard its customers privacy, and thereafter intentionally failed to inform Plaintiffs and Class members of the data breach.

184. The Utah Supreme Court has held that breach of contract, standing alone, does not call for punitive damages even if intentional and unjustified, but such damages are allowable if there is some independent tort indicating malice, fraud or wanton disregard for the rights of others. Hal Taylor Assocs v. Unionamerica, Inc., 657 P.2d 743, 750 (Utah 1982); See also Dold v. Outrigger Hotel, 54 Hawaii 18, 501 P.2d 368 (1972); Temmen v. Kent-Brown Chevrolet Co., 227 Kan. 45, 605 P.2d 95 (1980); Jackson v. Glasgow, Okla. Ct. App., 622 P.2d 1088 (1980). Plaintiffs contend that Visa and Mastercard waiting more than twenty years, after developing a technology that decreased fraud by 70%, before implementing the same or similar technology calls for punitive damages. Plaintiffs contend that likewise Targets failure to implement the same system which it tested four-five years earlier, coupled with its failure to act in response to the reported malware from governmental and private agencies, call for punitive damages.

185. Plaintiffs contend that the wanton refusal to notify customers of the data breach, until the breach was identified by a third party, warrants the imposition of punitive damages against the Defendants pursuant to the independent intentional torts committed by the Defendants.

186. Plaintiffs additionally contend that during the time of bailment, Defendants owed Plaintiffs and the Class members a duty to safeguard their information properly and maintain reasonable security procedures and practices to protect such information (as set forth in TARGET's privacy policies).

187. Plaintiffs allege Defendant TARGET breached this duty. Plaintiffs additionally contend that Visa and Mastercard breached their respective duties in failing to institute the chip and pin or other more advanced technology in the United States.

188. Plaintiffs assert that as a result of these breaches of duty, breach of contract, and breach of bailment, Plaintiffs and the Class members have suffered harm.

189. Plaintiffs seek actual damages from all Defendants on behalf of the Class.

FIFTH COUNT

Conversion

190. Plaintiffs incorporate by reference paragraphs 1-189 as if set forth with full particularity herein.

191. Plaintiffs and Class members were the owners and possessors of their private information. As the result of Defendants' wrongful conduct, Defendants have interfered with the Plaintiffs and Class members' rights to possess and control such property, to which they had a superior right of possession and control at the time of conversion.

192. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class members suffered injury, damage, loss or harm and therefore seek compensatory damages.

193. Plaintiffs allege that in converting Plaintiffs private information, Defendants have acted with malice, oppression and in conscious disregard of the Plaintiffs and Class members' rights. Plaintiffs, accordingly, seek an award of punitive damages on behalf of the Class.

194. Plaintiffs and the Class members did not consent to Defendants' mishandling and loss of their

private information.

SIXTH COUNT

Violation of UCA

195. Plaintiffs incorporate by reference paragraphs 1-194 as if set forth with full particularity herein.

196. The data breach described above constituted a "breach of the security system" of TARGET, within the meaning of Section 13-44-102, Utah Code Annotated and constituted a breach of TARGETS announced adequate security measures.

197. The information lost in the data breach constituted "personal information" within the meaning of Section 13-44-102(3)(a) Utah Code Annotated.

198. Plaintiffs contend that all Defendants failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the data breach, which failure caused Plaintiffs and other Class members harm and injury.

199. Plaintiffs assert that TARGET unreasonably delayed informing anyone about the breach of security of Plaintiffs and Class members' confidential and non-public information after Defendant TARGET knew the data breach had occurred.

200. Plaintiffs allege Defendant TARGET failed to disclose to Plaintiffs and Class members, without unreasonable delay, and in the most expedient time possible, the breach of security of their unencrypted, or not properly and securely encrypted, personal information when TARGET knew, or reasonably believed such information had been compromised.

201. Upon information and belief, no law enforcement agency instructed TARGET that notification to Plaintiffs or Class members would impede investigation.

202. Plaintiffs allege that as a result of Defendants TARGET, Mastercard and Visa’s breach of contract, negligence, failure to secure private information, Plaintiffs and other Class members incurred economic damages, including, but not limited to, expenses associated with necessary credit monitoring.

203. Plaintiffs, individually and on behalf of the Class, seek all remedies available under applicable Utah and Federal laws, including, but not limited to: (a) damages suffered by Class members as alleged above; (b) statutory damages jointly and severally for Defendants' willful, intentional, and/or reckless violation of Utah Unfair Competition Act; and (c) equitable relief.

204. Plaintiffs, individually and on behalf of the Class, also seek reasonable attorneys' fees and costs as allowed by statue, and law.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for judgment as follows:

A. For an Order certifying this action as a class action and appointing Plaintiffs and their Counsel to represent the Class;

B. For equitable relief enjoining Defendants, jointly and severally, from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiffs and Class members' private information, and from refusing to issue prompt, complete and accurate disclosures to the Plaintiffs and Class members;

C. For equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendants' wrongful conduct;

D. For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;

E. For an award of punitive damages;

F. For an award of costs of suit and attorneys' fees, as allowable by law; and

G. Such other and further relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law.

Dated: March 3, 2014

Christensen Young & Associates, PLLC

__/s/ Steven A. Christensen___.
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CERTIFICATE OF SERVICE

I, Steven A. Christensen, hereby certify that I caused to be delivered, this 3rd day of March,2014, a true and accurate copy of the Amended Complaint, via CM/ECF to the following counsel:

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By: /s/ Steven A. Christensen .
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